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Attorneys for Defendants  
 ETHICON, INC. (on its own behalf and behalf of its  
 Division, ETHICON WOMEN'S HEALTH &  
 UROLOGY, and erroneously sued as GYNECARE,  
 INC.); and JOHNSON & JOHNSON

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

GINA LAFORGE, an individual,  
 Plaintiff,

v.

GYNECARE, INC., a California  
 corporation; ETHICON, INC., a New  
 Jersey corporation; JOHNSON &  
 JOHNSON, a New Jersey corporation; and  
 DOE MANUFACTURES ONE through  
 ONE HUNDRED,  
 Defendants.

Case No. 4:11-CV-00698-CW

**JOINT STIPULATION AND ~~PROPOSED~~  
 ORDER RE DISMISSAL OF PLAINTIFF'S  
 COMPLAINT WITHOUT PREJUDICE**

Judge: Hon. Claudia Wilken

Complaint Filed: October 20, 2010  
**Trial Date:** Not set

WHEREAS, counsel for Plaintiff Gina LaForge has requested that counsel for Defendants  
 Ethicon, Inc. and Johnson & Johnson enter into negotiations regarding the response of Defendants  
 to an anticipated motion of Plaintiff to dismiss the above-captioned litigation pursuant to Federal  
 Rule of Civil Procedure 41(a)(2) without prejudice for the purpose of re-filing the above-  
 captioned action in the state courts of New Jersey; and

WHEREAS, counsel for Plaintiff also represents eleven (11) other Plaintiffs who have 11  
 similar lawsuits that are pending against Defendants Ethicon, Inc. and Johnson & Johnson in

1 Federal or State court of six different States, viz., the States of California, Indiana, Maryland,  
 2 Missouri, New Mexico, and Washington, with 10 of those suits pending in federal district court;  
 3 and

4 WHEREAS, counsel for Plaintiff has indicated that said counsel would file similar  
 5 motions to dismiss without prejudice in ten (10) pending federal district court actions all for the  
 6 purpose of re-filing each one of those actions in the state courts of New Jersey; and

7 WHEREAS, counsel for Plaintiff has requested that counsel for Defendants consider a  
 8 global resolution of how the Plaintiffs and Defendants may reach a mutual stipulation and  
 9 agreement regarding the dismissal without prejudice of all eleven (11) lawsuits, thereby  
 10 facilitating the dismissal of those actions and conserving the resources of the Federal judicial  
 11 system; and

12 WHEREAS, the “primary purpose of Rule 41(a)(2) is to protect the interests of the  
 13 defendant, although the court should weigh the equities and do justice to all the parties in the  
 14 case” and therefore, a “dismissal without prejudice should be denied when the defendant will  
 15 suffer ‘plain legal prejudice’ but should normally be granted in the absence of such prejudice,”  
 16 *see* 8 Moore’s Federal Practice ¶ 41.40[5][a], at p. 41-141 (3d ed. 2010); and

17 WHEREAS, counsel for Defendants have indicated the willingness of Defendants to enter  
 18 into negotiations that would result in the dismissal without prejudice of the foregoing eleven (11)  
 19 lawsuits so long as the relative legal positions that exist between the parties in each of the eleven  
 20 (11) lawsuits will not be prejudiced either now upon dismissal or when counsel for the eleven  
 21 (11) Plaintiffs re-file their current lawsuits in any subsequent judicial forum; and

22 WHEREAS, Plaintiffs have agreed that the legal status quo that now exists between the  
 23 parties in their separate pending lawsuits should be preserved and maintained in any future  
 24 proceeding that is re-filed by any Plaintiff against Defendants; and

25 Plaintiff Gina LaForge and Defendants Ethicon, Inc. and Johnson & Johnson therefore  
 26 mutually STIPULATE and AGREE to the conditional dismissal of Plaintiff’s Complaint without  
 27 prejudice, and in accordance with the terms of their MUTUAL AGREEMENT and  
 28 STIPULATION, the Court, pursuant to Federal Rule Civil Procedure 41(a)(2), hereby finds and

1 ORDERS as follows:

2 1. The Complaint of Plaintiff is hereby conditionally dismissed without prejudice  
3 subject to (a) Plaintiff agreeing and stipulating that the conditions set forth in this paragraph and  
4 paragraphs 2-12 below shall be imposed in any and all lawsuits that Plaintiff subsequently files  
5 against Defendants or either of them ("Defendants") in any state or federal court located in any  
6 state, territory, or possession of the United States of America or in any court in the District of  
7 Columbia related to the subject matter of Plaintiff's Complaint filed in the case sub judice  
8 ("Plaintiff's subsequent lawsuit") and (b) that the parties' compliance with the terms of the  
9 settlement contract shall be one of the material terms of their contract and this order.

10 2. The time of filing Plaintiff's subsequent lawsuit shall be deemed to be the time of  
11 filing Plaintiff's original action against Defendants for purposes of calculating the limitations  
12 period that applies to Plaintiff's claims, rather than the actual date when Plaintiffs file their  
13 subsequent litigation in New Jersey. Any statute of limitations, prescription, or repose that  
14 applies to Plaintiff's Complaint filed in the case sub judice, if shorter in duration than any other  
15 statute of limitations, prescription, or repose that may apply in Plaintiff's subsequent lawsuit,  
16 shall apply in Plaintiff's subsequent lawsuit in lieu of any other statute of limitations,  
17 prescription, or repose.

18 3. Any state statute that places a cap, ratio, or other limitation upon the amount of  
19 non-economic damages or the amount of punitive damages that may be recovered by Plaintiff and  
20 applies to Plaintiff's Complaint filed in the case sub judice, if lower than the amount of the caps,  
21 ratios, or other limitations contained in any such state statute, if any, that may apply in Plaintiff's  
22 subsequent lawsuit, shall apply in Plaintiff's subsequent lawsuit in lieu of any other such state  
23 statute.

24 4. Plaintiff(s) shall not file Plaintiff's subsequent lawsuit without first producing to  
25 counsel for Defendants copies of medical records and hospital records of Plaintiff which allegedly  
26 show that Plaintiff was allegedly implanted with one or more medical devices manufactured by  
27 Defendant Ethicon, Inc., including the physician's notes of each one of Plaintiff's implanting  
28 surgeons and treaters whom Plaintiffs consulted about the conditions leading to Plaintiff's

1 surgery(ies).

2 5. The Order of the United States District Court for the Northern District of  
3 California which severed the parties to the original action in which Plaintiff was a party and  
4 transferred the Plaintiff's claims to this District Court ("Order to sever and transfer"), Order  
5 Granting Defendants' Motion to Sever Under Rule 21 and Transfer Under 28 U.S.C. § 1406(a) or,  
6 in the Alternative, 28 U.S.C. § 1404(a), (Apr. 6, 2011), was an appealable order to the United  
7 States Court of Appeal for the Ninth Circuit under 28 U.S.C. § 1291. *See Coughlin v. Rogers*,  
8 130 F.3d 1348, 1349 (9th Cir. 1997). Because the time within which Plaintiff may take an appeal  
9 from the Order to sever and transfer has run, *see* Fed. R. App. Pro. 4(a)(1)(A), the Order to sever  
10 and transfer is now final and is res judicata between Plaintiff and Defendants as to those issues  
11 decided by said Order to sever and transfer. Accordingly, the final Order to sever and transfer  
12 will not be treated as a nullity and will not be vacated by this District Court as a result of its  
13 conditional dismissal of this action, *see National R.R. Passenger Corp. v. International Ass'n of*  
14 *Machinists & Aerospace Workers*, 915 F.2d 43, 48 (1<sup>st</sup> Cir. 1990), and the Order to sever and  
15 transfer is entitled to be given *stare decisis* effect in any forum.

16 6. Upon being served with a summons and complaint and when answering or  
17 otherwise responding in the manner required by law in Plaintiff's subsequent lawsuit, Defendant  
18 may also assert and allege any other defenses that are available under the laws of the forum State  
19 in which Plaintiff's subsequent lawsuit is filed.

20 7. The parties agree that it would be difficult to calculate actual damages, beyond  
21 recovery of costs and attorneys' fees, arising from a material breach of this Agreement. As such,  
22 the parties agree that in the event either party breaches this Agreement, which governs the  
23 disposition and dismissal of eleven (11) lawsuits, the breaching party shall be subject to one, but  
24 only one, legal action for said breach and shall pay to the non-breaching party the sum of \$15,000  
25 as liquidated damages. The parties agree that this amount constitutes a reasonable estimate of  
26 damages and that this amount does not constitute and should not be construed as a penalty.

1 The failure of Plaintiff or her counsel to adhere to any of the preceding conditions is a  
2 material breach of her MUTUAL AGREEMENT AND STIPULATION with Defendants.

3 Dated: September 9, 2011

DRINKER BIDDLE & REATH LLP

5 By: /s/ Michelle A. Childers

6 Michelle A. Childers

7 Attorneys for Defendants  
8 ETHICON, INC. (on its own behalf and behalf  
9 of its Division, ETHICON WOMEN'S  
10 HEALTH & UROLOGY, and erroneously  
11 sued as GYNECARE, INC.); and JOHNSON  
12 & JOHNSON

11 Dated: September 9, 2011

GIRARDI | KEESE

13 By: /s/ Amanda Kent

14 Amanda Kent

15 Attorneys for Plaintiff  
16 GINA LaFORGE

17 **ORDER**

18  
19 **PURSUANT TO THE FOREGOING MUTUAL AGREEMENT AND**  
20 **STIPULATION, IT IS SO ORDERED**, this the 12th of September, 2011.

21 BY THE COURT

22  
23 By: 

24 Honorable Claudia Wilken  
25 United States District Judge  
26  
27  
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